

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN TODD,

Defendant-Appellant.

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UNPUBLISHED

April 26, 2007

No. 268741

Wayne Circuit Court

LC No. 99-012568

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRION A. WILLIAM, a/k/a JOHN TODD,

Defendant-Appellant.

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No. 270147

Wayne Circuit Court

LC No. 99-012602

Before: Meter, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

After defendant violated his probation, the trial court sentenced him to concurrent prison terms of 6-1/2 to 20 years each for his convictions on two separate counts of possession with intent to deliver less than 50 grams of a controlled substance, MCL 333.7401(2)(a)(iv). Defendant now appeals each of his sentences by delayed leave granted. We affirm. These consolidated appeals are being decided without oral argument pursuant to MCR 7.214(E).

In January 2000, defendant pleaded guilty in two separate cases of possessing with intent to deliver less than 50 grams of a controlled substance. In February 2000, the circuit court sentenced defendant to concurrent terms of one year in jail and lifetime probation in each case. After a hearing in March 2003, the circuit court found that defendant violated the terms of his probation by again possessing cocaine and heroin. In April 2003, citing defendant's repeated parole violations, the court sentenced him to concurrent 6-1/2 to 20-year prison terms in both cases. On August 30, 2005, however, our Supreme Court, in lieu of granting leave to appeal, vacated the sentences and remanded the cases to the trial court for resentencing in light of *People v Hendrick*, 472 Mich 555; 697 NW2d 571 (2005), and *People v Babcock*, 469 Mich 247; 666

NW2d 231 (2003).” See *People v William*, 474 Mich 851 (2005). On December 2, 2005, the circuit court imposed the same 6-1/2 to 20-year sentences.

“The legislative sentencing guidelines apply to certain enumerated felonies committed on or after January 1, 1999.” *Hendrick*, *supra* at 560, citing MCL 777.1 *et seq.* The legislative “guidelines apply to all enumerated felonies committed on or after the effective date, whether or not the sentence is imposed after probation revocation.” *Id.* Here, defendant’s convictions constitute felonies enumerated in the sentencing guidelines. MCL 777.13m.

A trial court must impose a minimum sentence within the statutory guidelines range unless the court “has a substantial and compelling reason for th[e] departure and states on the record the reasons for departure.” MCL 764.34(3). Michigan courts have defined a “substantial and compelling reason” as a reason that (1) is objective and verifiable, (2) keenly or irresistibly draws the attention of a court, and (3) has “‘considerable worth’ in deciding the length of a sentence.” *Babcock*, *supra* at 257-258, 272, quoting *People v Fields*, 448 Mich 58, 62, 67; 528 NW2d 176 (1995). The trial court cannot premise a departure from the guidelines “on an offense characteristic or offender characteristic already taken into account in determining the appropriate sentence range unless the court finds . . . that the characteristic has been given inadequate or disproportionate weight.” MCL 769.34(3)(b). But this Court has recognized that an “offender’s probation violation itself is an objective and verifiable factor worthy of independent consideration,” and that “the trial court in its discretion may conclude that th[is] factor provides a substantial and compelling reason to depart from the sentencing guidelines.” *People v Schaafsma*, 267 Mich App 184, 186; 704 NW2d 115 (2005).

This Court reviews for clear error a trial court’s finding concerning the existence or nonexistence of a particular sentencing factor, but considers de novo the legal determination whether a particular factor qualifies as objective and verifiable. *Babcock*, *supra* at 264-265, 273. This Court reviews for an abuse of discretion a trial court’s determination that an objective and verifiable factor constitutes a substantial and compelling reason justifying departure from the statutory minimum sentence range. *Id.* at 264-265, 274.

In February 2000, the circuit court calculated the statutory sentencing guidelines range applicable to each of defendant’s convictions at between zero and seventeen months. During the resentencing hearing on December 2, 2005, the circuit court plainly articulated that it intended to depart upward from the guidelines in light of defendant’s repeated violations of probation, at least three or four violations in the course of the court’s long involvement with defendant. The presentence investigation reports (PSIRs) prepared for the December 2005 resentencing, the relevant portions of which defendant did not dispute, reflect that (1) after defendant’s first conviction in January 1997, a plea to attempted CCW, the circuit court sentenced him to probation pursuant to the Holmes Youthful Trainee Act (HYTA), MCL 762.11 *et seq.*, (2) approximately four months after the circuit court had imposed two years’ probation pursuant to the HYTA, the court revoked defendant’s HYTA status and imposed a three-year term of probation in July 1997, (3) in August 1998, the circuit court issued another warrant for defendant’s violation of his probation, and he pleaded guilty of the violation in May 1999, and (4) after pleading guilty of the possession with intent to deliver charges at issue in these appeals, (a) defendant violated the initial lifetime term of probation he received in LC No. 99-012602 by failing to report to his probation officer, and (b) he violated his terms of lifetime probation in LC Nos. 99-012568 and 99-012602 when the circuit court found in March 2003 that he again had

possessed illegal drugs. The PSIRs also indicate that “defendant’s adjustment to probation was described as poor. He failed to make any payments and failed to attend GED,” also remaining unemployed.

Because probation violations as a matter of law constitute objective and verifiable reasons for departing from the legislative sentencing guidelines, and because in this case defendant undisputedly violated terms of probation on four occasions, we conclude that the circuit court did not abuse its discretion when, on the basis of these repeated parole violations, it imposed terms of imprisonment of 6-1/2 to 20 years for each of the underlying possession with intent to deliver convictions. *Schaafsma, supra* at 185-186 (emphasizing that “any probation violation represents an affront to the court and an indication of the offender’s callous attitude toward correction and toward the trust the court has granted the probationer”).

Affirmed.

/s/ Patrick M. Meter  
/s/ Kirsten Frank Kelly  
/s/ Karen M. Fort Hood